

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DAVID SCHULTZ and WAYNE WIRKKALA,)	Case Nos. RULE-97-0075 and RULE-97-0076
)	
Appellants,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF BOARD
v.)	
)	
DEPARTMENT OF TRANSPORTATION,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this matter came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Member. The hearing was held in the Personnel Appeals Board Hearing Room, 2828 Capitol Boulevard, Olympia, Washington, on October 22, 1998. HOWARD N. JORGENSEN, Chair, reviewed the record, including the file, exhibits, and the entire taped proceedings, and participated in the decision in this matter.

1.2 **Appearances.** Appellants David Schultz and Wayne Wirkkala were present and were represented by Bill Kalibak, Union Representative, International Federation of Professional and Technical Engineers, Local 17. Respondent Department of Transportation was represented by Carol Bogue, Personnel Manager.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellants contend that the department violated Merit System Rules 356-26-130 by unnecessarily applying a “selective certification” when recruiting for a Transportation Engineer 3 position.

1.4 **Citations Discussed.** WAC 358-30-120 and MSR 356-26-130.

II. FINDINGS OF FACT

2.1 Appellants David Schultz and Wayne Wirkkala are Transportation Engineer 3’s and permanent employees for Respondent Department of Transportation. Appellants and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellants filed timely appeals with the Personnel Appeals Board on October 6, 1997.

2.2 In their appeal forms, Appellants alleged that Respondent violated MSR 356-26-130. Appellants asserted that Respondent DOT’s Southwest Region filled a Transportation Engineer (TE) 3 position by imposing a selective certification requiring the candidate to possess a Land Surveyor In-Training (LSIT) certificate for a Professional Land Surveyor’s (PLS) license rather than using the existing TE 3 register.

2.3 At the time they filed their appeals, Appellants Schultz and Wirkkala held positions as TE 2’s and their names were on the register for TE 3.

2.4 The working title of the TE 3 position that Appellants are referring to is Location Survey Crew Coordinator (LSCC) and the position number is 40979.

2.5 Jack Foulke, Location Project Engineer, has supervised the LSCC position for a number of years. Mr. Foulke acknowledges that historically the LSCC position did not require a candidate to

1 possess a LSIT certificate or a PLS license. When the position became vacant in 1996, Mr. Foulke
2 assessed the agency's needs in conjunction with the duties and requirements of the position. Mr.
3 Foulke noted several changes affecting the position. First, Mr. Foulke observed that the duties and
4 requirements of the LSCC had evolved over time and required a thorough knowledge of technical
5 surveying methods, rules and regulations. Second, the surveys themselves were under more
6 scrutiny. Therefore, Mr. Foulke made a concerted effort to study what type of a background was
7 necessary to successfully meet the surveying demands of the position.

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9 2.6 Mr. Foulke also took into consideration that when the position had been filled with non-
10 licensed individuals, some surveying projects were incorrectly performed raising questions over the
11 accuracy of surveys, but when the position was briefly filled by a licensed individual, these
12 problems dissipated. Previously, the agency utilized the services of contracted, licensed surveyors
13 to perform boundary surveys. Having a licensed individual in the position would eliminate the need
14 to contract out this type of survey.

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16 2.7 As a result, Mr. Foulke concluded that an individual with proper land surveying credentials
17 would best meet the needs of the agency. Mr. Foulke subsequently recommended that selective
18 certification criteria be placed on the LSCC position.

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20 2.8 In February 1997, the classification questionnaire (CQ) for the LSCC position was updated
21 and approved. The updated CQ includes the following duties:

22
23 45% Directs, coordinates, and schedules survey crews in gathering, downloading,
24 editing, and dissemination of field data for design projects being prepared by
25 Location Project Engineer offices. Ensures that surveys are performed using proper
26 surveying practices and appropriate equipment (such as Total Stations, Data
Collectors, levels, and personal computers). Serves as the expert in location
surveying and resolving surveying problems.

35% Serves as liaison between designers and survey crews. Provides technical assistance to designers in researching, securing, and interpreting information from general land office notes, survey plats, and land corner records for preparing right of way plans, roadway alignment plans, and records of monumentation. Provides technical assistance to designers in preparing requests for survey work and performs on-site review of projects.

Item 36 of the CQ was also updated to require the incumbent in the position to have a Land-Surveyor-In-Training certificate or Professional Land Surveyor's license. (Exh. R-3).

2.9 A Land-Surveyor-In-Training certificate can be obtained through the Department of Licensing by way of an application process which requires that "the applicant has completed four years of the required land surveying experience . . ." (Exh. A-7).

2.10 A Professional Land Surveyor's license can also be obtained through the Department of Licensing by way of an application process which requires the applicant to show proof that he/she has a "specific record of eight years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying . . ." (Exh. A-7).

2.11 On February 18, 1997, in preparation for recruiting for a TE 3 position, the DOT personnel requested, through the Department of Personnel, that a selective certification be added to the LSSC, position #40797. In its justification document, DOT described why the selective criteria was required for successful performance of the positions duties:

A minimum of four years of land surveying experience as evidenced by a land surveyor in training or professional land surveyor's license is needed to successfully ensure that topographical roadway alignment and right of way surveys are complete and accurate, that correct survey practices are used, and that the position has the proper technical background.

1 2.12 DOP approved the selective certification request and the position was filled using the
2 Transportation Engineer 3 register with the names of candidates who met the selective requirement.
3 Both Appellants were on the TE 3 register but neither met the selective certification criteria.
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5 2.13 WAC 356-26-130, Certification—Selective, indicates as follows:

6 An appointing authority may request a selective certification of eligibles who have
7 specialized qualifications that are required for the successful performance of the
8 duties of the position, and cannot be gained within a reasonable time, not to exceed
9 the probationary or trial services period. This request must be made prior to
10 certification.

11 If the director of personnel determines that the facts and reasons justify the
12 request, the highest ranking eligibles who have the specialized qualifications shall be
13 certified.

14

15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 Appellants argue that they were on the register for the position of Transportation Engineer 3,
17 yet they were precluded from applying for an open position because of the selective certification
18 requirement placed on the position by Respondent. Appellants argue that Respondent's request for
19 the selective certification requirement "represented a dramatic change in the historical requirements
20 of the position." Appellants allege that the requirements for a Transportation Engineer 3 would
21 have met the needs of the position and that the level of expertise for the LSCC position was not
22 solely found in a credentialed person because the licensing board would not discount "survey
23 experience gained under a Professional Licensed Engineer." Appellants argue that Respondent
24 failed to establish that the selective certification was required for the position and that the expertise
25 needed for the position could not have been gained in a reasonable period of time. Finally,
26 Appellants allege that Respondent placed a selective certification on the position in order to appoint
a pre-selected individual. As a remedy, the Appellants request the selective certification

1 requirement be set aside and that the Transportation Engineer 3 register that existed at that time be
2 utilized to fill the position.

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4 3.2 Respondent argues that the Transportation Engineer 3 job class is fairly broad in usage and
5 does not normally require the candidate to have a surveying background. Respondent argues that
6 the LSCC is a specialized position and now requires the use and implementation of high technology
7 and that its primary duties are to direct, coordinate and schedule survey crews who gather field data
8 for design projects. Respondent argues that the position is responsible for state-of-the-art surveying
9 practices and that the incumbent is the regional expert in location surveying with responsibility for
10 resolving surveying problems. Respondent argues that the selective certification criteria was
11 necessary to ensure that the agency uses correct surveying practices and that survey laws are
12 applied. Respondent also argues that having an incumbent who meets the selective criteria will
13 relieve the department of having to use the services of a contracted licensed surveyor to perform
14 boundary survey work. Respondent argues that an in-training period was not feasible because of
15 the requirements of the state licensing board. Respondent asserts that it has complied with the
16 requirements of WAC 356-26-130, that the Department of Personnel granted the selective
17 certification request, and that no rule violation occurred.

18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
21 herein.

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23 4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-
24 170).

1 4.3 The issue here is whether Respondent violated WAC 356-26-130 by applying a selective
2 certification requirement when recruiting and filling a Transportation Engineer 3 position, working
3 title Location Survey Crew Coordinator. Pursuant to WAC 356-26-130, it is within the
4 department's discretion to request a selective certification. The department concluded that position
5 #40797 had specialized qualifications to successfully perform the duties of the position. The
6 department further determined that the specialized qualifications could not be gained during either a
7 probationary or trial service period. The department submitted the proper documentation to the
8 Department of Personnel with the grounds for the selective certification. Having met all of the
9 requirements of WAC 356-26-130, the DOP approved Respondent's request.

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11 4.4 While it is undisputed that the position did not previously require the incumbent to possess a
12 LSIT certificate or a PLS license, Appellants' did not present convincing evidence or testimony to
13 show that Respondent applied the selective certification for any reason other than its determination
14 that changes in the surveying field placed more demands on the LSCC. Appellants have further
15 failed to establish that the experience and knowledge required of the LSCC position could be gained
16 during a probationary or trial services period.

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18 4.5 Respondent has shown that it applied the selective criteria to the LSCC position because the
19 position had special qualifications necessary to successfully perform the duties of the position.
20 Appellants have failed to meet their burden of proof that Respondent violated WAC 356-26-130.
21 Therefore, we conclude that Respondent did not violate WAC 356-26-130 and Appellants' appeals
22 should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals of David Schutlz and Wayne Wirkkala are denied.

DATED this _____ day of _____, 1998.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Howard N. Jorgenson, Chair

Walter T. Hubbard, Member